

Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Temporary closures or restrictions to taking wildlife (black bears)

Pursuant to Title 36 of the Code of Federal Regulations (CFR), sections 13.40 and 13.50, the National Park Service (NPS) has determined it is necessary to restrict the take of black bears using artificial light at den sites and the take of black bear cubs and sows with cubs at den sites in the Denali and Gates of the Arctic National Preserves. These changes are in response to changes in state law.

13.40(e) Temporary closures or restrictions to the taking of fish and wildlife (black bears)

- From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law in Denali and Gates of the Arctic National Preserves.
- From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site Denali and Gates of the Arctic National Preserves.

The reasons for these restrictions are:

During the 2008 Southeast Region Board of Game (BOG) meeting, the BOG made an exception to two long standing general prohibitions regarding the take of black bears. The BOG authorized all state residents to use artificial light to take black bears at den sites and to take black bear cubs and sows with cubs at den sites under customary and traditional use activities from October 15 to April 30 in Unit 19A, portions of Unit 19D, and in Units 21B, 21C, 21D, 24, and 25D. The NPS did not immediately recognize that two NPS preserves were included and consequently did not comment on these proposals. When the regulation was promulgated, the NPS identified small portions of two national preserves in Units 19D and 24 that were included in these authorizations.

The State of Alaska is the primary entity responsible for managing wildlife in accordance with State mandates. At the same time, the NPS is charged with the responsibility for assuring that the take of fish and wildlife is consistent with the fundamental purposes of the park system and individual park units. The NPS Organic Act is a Federal law that provides the fundamental purpose of national park areas is conservation of park resources and values, including the scenery, the natural and historic objects, and wild life therein, and prohibits impairment of park resources or values. Policies implementing this mandate require the NPS to protect natural systems, processes, and wildlife populations, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2.

Under NPS Management Policies, activities that may result in impairment include those that impact a “resource or value whose conservation is . . . key to the natural . . . integrity of the park or to provide opportunities for enjoyment of the park.” (NPS Management Policies, 1.4.5) Because the impact threshold at which impairment occurs is not always readily apparent, the NPS policies require managers avoid unacceptable impacts to park resources and values.

Unacceptable impacts are those that are inconsistent with park purposes and values; diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values; or unreasonably interfere with other appropriate uses.

ANILCA, the Federal law specifically applicable to Alaska NPS areas, does not alter these expectations. ANILCA directs the Secretary of Interior to administer Alaska NPS units in accordance with the NPS Organic Act. ANILCA provides that national preserves are to be managed in the same manner as national parks with the exception that sport hunting and trapping are allowed. (ANILCA, sec. 1313). Taking of wildlife for subsistence uses by rural residents is also authorized in preserves in accordance with Federal subsistence regulations. Among the purposes outlined at the beginning of ANILCA, Congress expressly stated the intent to preserve wildlife and wilderness values and natural undisturbed, unaltered ecosystems while allowing for recreational opportunities, including sport hunting. ANILCA, Sec. 101(a)-(b). The legislated purposes of Denali and Gates of the Arctic specifically include the protection of habitat for and populations of fish and wildlife. ANILCA, sec. 201, 202.

The legislative history of ANILCA reaffirms that Congress did not absolve the National Park Service from operating within the legal, regulatory, and policy framework applicable across the National Park System. The Senate Energy and Natural Resources Committee (S. Rpt. 96-413) stated “It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources.” A further statement in the Congressional Record on ANILCA provides that “[t]he standard to be met in regulating the taking of fish and wildlife and trapping is that the preeminent natural values of the Park System shall be protected in perpetuity and shall not be jeopardized by human uses. These are very special lands and this standard must be set very high[.]”

The State’s general hunting program applies in NPS preserves to the extent that it is consistent with NPS laws, regulations and policies. The NPS may close or restrict the take of wildlife for sport purposes in preserves pursuant to ANILCA section 1313 and federal regulations at 36 CFR 13.40 and 13.50.

The State of Alaska provisions that allow use of artificial light to take denning black bears and the take of cubs and sows with cubs at den sites have the potential to create unacceptable impacts to the purposes and values of these preserves. These hunting practices have been prohibited since statehood with limited exceptions. Consistent with sound management principles and conservation of wildlife, practices that disturb animals when they are in a vulnerable state—in their dens, when reproducing, or very young—are usually avoided. The practical effect of these allowances, open to all state hunters, is increased efficiency for taking black bears. This has potential to create pressures on the natural abundance, behavior, distribution, and ecological integrity of these native wildlife species. State laws or actions that seek to manipulate natural wildlife populations for human consumption, or have that practical effect, are inconsistent with NPS statutes and implementing policies. To the extent impacts from these allowances are uncertain, NPS Management Policies direct the NPS to err on the side of protecting the wildlife (Management Policies 2006, 4.1).

The NPS recognizes and supports subsistence by federally qualified rural residents, sport hunting, and trapping. These activities are important heritage activities in NPS preserves in Alaska. The authorizations established by the BOG are not isolated from Federal authorities applicable on NPS lands. NPS management responsibilities established in the Organic Act and further refined in subsequent legislation, regulation, and policy, must be followed in determining which activities will and will not benefit the fundamental purpose of the National Park System. Introducing NPS preserves to these historically illegal methods of harvest and liberalizing the harvest of black bears to include cubs and sows with cubs is inconsistent with how ANILCA's authorization for sport hunting has been implemented in preserves. This restriction recognizes that State and Federal management objectives and mandates differ. A Federal restriction is necessary for NPS preserves to remain compliant with Federal law and policy for NPS areas. The NPS remains committed to managing park resources and values in a way that avoids unnecessary interference with State management of resident wildlife resources.

A less restrictive approach was not effective. The NPS consulted with the State of Alaska and made a proposal to the BOG to exempt NPS Preserves from these authorizations. At the February/March 2010 BOG meeting, the BOG voted not to adopt the NPS proposal. The NPS requested the Board revisit this authorization in preserves in 2013 and the Board considered but rejected that request at their January 2014 meeting. In the absence of change in state law or regulation, these restrictions are necessary. The NPS intends to propose a regulation to permanently address this issue.